

The Department “will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary.” 86 Ill. Adm. Code 270.115(b)(2). (This is a PLR.)

December 30, 2004

Dear Xxxxx:

This letter is in response to your letters dated September 25, 2003, and September 27, 2004 in which you request information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to ABC for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither ABC nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your September 25, 2003 letter you have stated and made inquiry as follows:

Please view this letter as a Private Letter Ruling (‘PLR’) Request, pursuant to 2 Ill. Adm. Code Sec. 1200.110, addressing the jurisdictional rules for the application of local retailers occupation taxes (‘LROT’), as they pertain to ABC retail credit sales transactions in Illinois.

FACTS

We represent ABC, a company engaged in the business of selling lumber and building materials and other related products throughout Illinois. The company is headquartered in CITY2, Illinois, and has locations in various municipalities in the State of Illinois. Each location has its own sales office and warehouse. In order to streamline its business operations, achieve cost efficiencies and better control its delivery operations, ABC has

decided for its off site deliveries to centralize its credit delivery sales functions at its location in CITY, Illinois. These 'credit delivery sales' involve the sale of lumber and building material and related products by ABC to its customers on an agreed to deferred-payment contract basis. It does not include cash sales or normal commercially-issued credit card sales to customers or walk in sales by credit customers where no delivery is required by ABC. Therefore, the two general types of sales that could be made by ABC for delivery or pickup in Illinois, are (a) cash sales and sales on credit to walk-in customers at its different sites, and (b) 'credit delivery sales' on a deferred-payment contract basis in which a customer enters into a sales contract with ABC for the purchase of materials, and ABC will effectuate delivery of such materials to the customer from various sites in Illinois. (For purposes of this letter, 'credit delivery sales' means sales by ABC on a deferred-payment contract basis to customers for delivery by ABC to such customer at a location in Illinois.)

The credit delivery sales contract process is as follows:

Master Contract approval and Price quote

- A construction contractor or other customer (together the 'contractor') has a sales discussion with a ABC salesman or other representative who solicits business for ABC but who does not actually accept/approve customer purchase orders for ABC.
- The potential credit sales contractor provides certain information to the salesman that is then submitted to ABC's Credit Department so that credit information can be obtained and processed.
- After credit is reviewed and pre-approved, the pre-approval is forwarded to a location manager or this location's sales representative for a price quote preparation. The location chosen to prepare the quote is determined by ABC's operations manager.
- The salesman or manager at the designated location creates the quote, which includes a price estimate and proposal, and then the location manager approves the offering of the quote.
- Once the contractor approves the quote, a credit sales contract application is completed by the customer and is forwarded to ABC's credit manager for approval. (Copy of terms and conditions, attached as Exhibit A) Afterwards, a special price list is set up and a customer credit sales account is created for the contractor.
- ABC is now bound to the contractor for price only. However the contractor has no obligation at this point to place a purchase order, nor has ABC tendered to the contractor an unconditional offers to sell any materials.

Sales Order Approval

- Over the life of the credit sales contract, a contractor who seeks a credit delivery sale will submit purchase order information to a ABC location, where it will be

typed up and electronically forwarded for approval to ABC's CITY facility. At the CITY facility, the purchase order is reviewed and a credit check done to make sure (i) the contractor still falls within the approved credit rating, (ii) the order is appropriate for the quantity and items ordered, and (iii) the order's delivery time and address is acceptable, before the purchase order is accepted by ABC.

- Upon acceptance of the purchase order by the employee at the CITY facility, the employee will enter an 'approval' code in the computer system for the order and signs the order as accepted.
- After the purchase order is accepted and processed by an employee at the CITY facility, ABC becomes bound to deliver the building materials to contractor at the agreed upon prices, terms and conditions.
- ABC then determines where the materials are available and their proximities to the contractor's construction location, converts the order into an invoice at the CITY facility and then sends electronically a copy of the invoice to the location from which the materials will be delivered.
- The materials are then delivered to the construction site previously designed by the contractor.
- Upon accepting delivery of the materials at the construction site, the contractor will sign a copy of the invoice recognizing acceptance of the delivery.

OPINION REQUESTED

For ABC's aforementioned 'credit delivery sales', the order acceptance, and thus the point of sale, take place at ABC's CITY facilities for purposes of determining the appropriate LROT rate to apply to such 'credit sales.'

STATEMENT

No litigation is currently pending between ABC and the Illinois Department of Revenue ('Department'). To the best of our knowledge, the Department has not previously ruled on the same or similar issues for ABC, nor has ABC submitted a petition on a similar issue and withdrawn it before a letter ruling was issued. The Department has issued a number of private letter rulings and general information letters on the same issues, including ST 01-0007-PLR, ST 03-0006-PLR, ST 01-0006-GIL and ST 02-0273-GIL. A power of attorney for ABC is attached to this letter.

APPLICABLE LAW

Both the Illinois and local retailers occupation taxes are imposed upon persons engaged in selling at retail tangible personal property. The Illinois Retailers Occupation Tax is imposed upon persons engaged in selling at retail within the state of Illinois. 35 ILCS 120/2. The LROT, including the municipal, county and special district retailers occupation taxes, are imposed upon persons engaged in the business of selling tangible personal property at retail within such respective municipality, county or special

district. See e.g. 55 ILCS 5/5-106; 65 ILCS 5/8-11-1; 20 ILCS 2505/39619; 70 ILCS 3615/4.03.

In determining the location of a sale for LROT purposes, the Department has instructed that the single most important element is the location where the seller accepts the customer's purchase order. 86 Ill. Adm. Code Sec's. 270.115(b)(1), 220.115(c)(1), 630.120(b)(1), and 320.115; ST 01-007-PLR (February 15, 2001); ST 02-0273-GIL (December 27, 2002); ST 03-0006-PLR (March 7, 2003); ST 99-0260-General Information Letter (GIL) (August 25, 1999), ST 00-0020-GIL (January 26, 2000), ST 00-0038-GIL (March 6, 2000), and ST 00-0085-GIL (April 19, 2000), ST 93-0569-GIL (November 8, 1993).

As to lumber and building material retailers, like ABC, in several PLRs and GILs the Department has recently explained where it deems a purchase order is accepted, and thus the sale made, for purposes of the LROT.

In PLRs ST 03-0006 and ST 01-0007, and in GILs ST 02-0273 and ST 01-0006, the Department reviewed the credit sales activities of companies engaged in the business of selling lumber and other building materials. These companies had multiple locations in Illinois, but decided for various business reasons to centralize their approval of credit sales at one city location. As a result, the acceptance of the individual purchase orders for these credit sales was effectuated by an employee of these companies at this centralized location. The Department ruled that since the purchase order was ultimately sent to this centralized location and was approved by the companies employee at that centralized location, the order-acceptance point and thus the point of sale for LROT purposes occurred at this centralized location.

The above PLRs are consistent with numerous PLRs and GILs of the Department which focus on the ultimate order approval point to determine the sales location for LROT purposes. See *also* ST 02-0011-PLR (June 3, 2002); ST 01-0028-PLR (July 12, 2001); ST 01-0018-PLR (May 16, 2001). In this regard, the Department has made it clear that the location of the ultimate acceptance of the purchase order (*i.e.*, final approval of the sale) by the seller is more important than where the customer places the order (ST 01-0008- PLR), the place of shipment (ST 02-0015-PLR and ST 02-0016-PLR), or even where negotiations for the order take place (ST 87-0262).

ANALYSIS

For walk-in sales at ABC's various locations, whereby the customer pays for the building materials with cash or by commercially-issued credit card or sales on credit where the customer picks up materials at the site, the order-acceptance point, and thus the point of sale, for purposes of imposing the LROT is at such various sites, since the order acceptance point takes place at those locations.

For 'credit delivery sales', the order-acceptance point, and thus the point of sale, is at ABC's location in CITY, Illinois. This is because the ultimate purchase-order acceptance takes place there, as demonstrated by the following activities:

- The customer's purchase order is forwarded to the CITY office for review and approval.

- ABC's CITY office reviews the order, perform the required credit checks and then its personnel accept or reject the purchase order all at the CITY facility.
- Only upon performance of a credit check, the review of the appropriateness of the quantities and items ordered and the review of the order's delivery time and address, will the acceptance/approval of the purchase order at the CITY office takes place and ABC will become bound to fulfill the order. After such approval, ABC's CITY office will direct the appropriate warehousing site to deliver the materials to the customer.
- Along with the aforementioned delivery directive, ABC's CITY office also generates the sales invoice from its computer located at its CITY facility.
- It is clearly ABC's intention to accept at its CITY facility such credit sales purchase orders, since, as stated, ABC wishes to streamline business operations and achieve cost efficiencies and better control its delivery operations, by centralizing its credit delivery sales approval procedures. (ABC's specific credit sales acceptance procedure for credit delivery sales is attached as Exhibit B.)

Therefore, for its aforementioned 'credit sales', the LROT's imposed in CITY, Illinois would apply.

CONTRARY AUTHORITY AND DISCUSSION

No contrary authority is found to the statements made above.

CONCLUSION

Based on the foregoing facts, please confirm that ABC's order-acceptance point, and thus its point of sale, for its aforementioned 'credit delivery sales' is at its office in CITY, Illinois, and that it should remit to the Department the applicable state and LROT that is imposed upon retailers doing business in CITY.

In your September 27, 2004 letter you have stated as follows:

Pursuant to our telephone conversation, this letter and its attachments are to supplement ABC's private letter ruling request dated September 25, 2003.

First of all, you raised certain factual questions concerning the Master Agreement ABC enters into with its Credit Delivery Sales customers. As you can see from the attachment to our September 25, 2003 letter, this Master Agreement is simply a "Credit Application" Agreement. It allows a customer to obtain prior credit approval for future purchases from ABC. It does not guarantee ABC will sell to the customer nor does it provide prices or quantities of anything.

Once a person is approved for credit, ABC may supply the customer with a price list of guaranteed prices for a limited period of time. The customer can then buy such items on credit for delivery by ABC using that price list. (Note: Some customers may not receive a guaranteed price list.) There is no contract made nor agreement entered into to sell

anything, until after customer places an order with ABC and ABC then accepts that order. As the Credit Application expressly states in paragraph 2 of the terms and conditions: "All approvals of Credit Delivery Sales will be processed in CITY, Illinois." Similarly, paragraph 5 states: "the approval for any credit delivery sale will be processed at CITY, Illinois."

As we discussed, ABC's Credit Application agreement is unlike the long term blanket or master contract referred to in Section 270.115(d) of the Department's Regulations. ABC's Credit Application Agreement has no definite price or quantity. Moreover, the separate price list given to some of its customers is not substantially different from a catalog price list or a sales paper. As a result, this subsection of the Regulations has no application to ABC's situation.

We have attached two additional documents for your review. The first is a detailed activity list for order approvals and processing by ABC's sales office in CITY. The second is a notice sent to ABC's lumber yard outlets for posting in order to let potential buyers know that any credit delivery sales will be reviewed and approved by the CITY office.

In addition, you asked a couple specific questions as to the review activity done in CITY. First, you asked about the credit review. This review is done to make sure the customer still has an approved credit rating at the time of the order. Second, a review of the credit limit is made to see if the customers purchases fall under that limit.

If you have any further questions, please call.

DEPARTMENT'S RESPONSE:

The Department's regulations state that "enough of the selling activity must occur within the home rule municipality to justify concluding that the seller is engaged in business within the home rule municipality with respect to that sale." 86 Ill. Adm. Code 270.115(a)(1). (emphasis added) The Department has opined that the seller's acceptance of the customer's purchase order is the "most important single factor" in the occupation of selling. However, when order acceptance activity takes place in more than one jurisdiction, the facts and circumstances surrounding the sale must be carefully scrutinized to assure that "enough" of the acceptance activity has occurred in the home rule municipality to justify the conclusion that the sale took place there. This inquiry will ordinarily be fact intensive and require an examination of all of the processes and procedures performed by the seller from the time the customer contacts the seller until the goods are delivered. Significantly, the Department "will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary." 86 Ill. Adm. Code 270.115(b)(2) (emphasis added.)

Ordinarily, therefore, the Department will not consider a municipality to be the situs of the sale merely because a company representative physically housed in that jurisdiction performs a computer-assisted credit check on the prospective customer and "approves" or "releases" the purchase order. This is so even if the credit check is the final step in the company's order acceptance process. This is implicit in the Department's previous guidance that selling usually occurs where the purchaser accepts "a complete and unconditional offer to sell."

Your request concerns what you refer to as “credit delivery sales.” Credit delivery sales are defined in your letter as sales of building materials that are made by ABC on a deferred-payment contract basis and are then delivered by ABC to a location in Illinois. The documents attached to your letters indicate that the “Master Agreement” is actually a credit application and is used merely to obtain an advance credit approval for future delivery sales. Based upon the representations in your letter, enough of the selling activity for the credit delivery sales occurs in CITY, Illinois to fix the situs of these transactions for local occupation tax purposes to CITY, Illinois. The sales referenced in your letter as cash sales, commercially issued credit card sales (sales where credit is provided other than by ABC, and all credit sales to customers when no delivery is required by ABC, are situated for local occupation tax purposes to the specific retail locations where those sales take place.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.ILTAX.com or contact the Department’s Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
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